RECORD AND BRIEFS

Supreme Court, U.S.
FILED
SEP 18 2017
OFFICE OF THE CLERK

Nos. 16-1436 and 16-1540

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., *Petitioners,*

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., *Petitioners,*

V.

STATE OF HAWAII, ET AL., *Respondents.*

On Writ of Certiorari to the United States Courts of Appeals for the Fourth and Ninth Circuits

BRIEF OF AMICI CURIAE TAHIRIH JUSTICE CENTER, THE ASIAN PACIFIC INSTITUTE OF GENDER-BASED VIOLENCE, CASA DE ESPERANZA, AND THE NATIONAL DOMESTIC VIOLENCE HOTLINE IN SUPPORT OF RESPONDENTS (Additional *Amici* Continued on First Page)

SCOTT L. WINKELMAN
Counsel of Record
LUKE VAN HOUWELINGEN
DALAL HASAN
AVI RUTSCHMAN
JUSTIN D. KINGSOLVER
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2500
swinkelman@crowell.com
Counsel for Amici Curiae

September 18, 2017

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

ADDITIONAL AMICI

ASISTA Immigration Assistance, Break the Cycle, Futures Without Violence, Legal Momentum, National Alliance to End Sexual Violence, National Coalition Against Domestic Violence, National Coalition of Anti-Violence Programs, National Immigrant Justice Center, National Indigenous Women's Resource Center, National Network to End Domestic Violence, National Organization for Women Foundation, National Resource Center on Domestic Violence

TABLE OF CONTENTS

Page

ADDITIONAL AMICI i

TABLE OF AUTHORITIES iv

INTEREST OF AMICI CURIAE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 10

I. BY HALTING THE REFUGEE PROGRAM, THE ORDER VICTIMIZES ALREADY VICTIMIZED WOMEN AND CHILDREN 10

A. Section 6 disables the United States Refugee Admissions Program in contravention of congressional intent. 10

B. Survivors of gender-based violence rely on the United States refugee program to escape their abusers. 12

C. By delaying refugee admissions decisions for at least 120 days and lowering the ceiling on refugee admissions, the Order perpetuates violence. 18

II. SECTION 2(C) IMPERILS VICTIMS OF GENDER-BASED VIOLENCE AND UNDERMINES LAW ENFORCEMENT. 22

A. Congress designed the T and U Visa programs to empower immigrant survivors of gender-based and

domestic violence and to make our communities safer. 23

B. Section 2(c) impairs a critical form of humanitarian relief offered by the T and U visa programs—family reunification through derivative visas. 25

III. THE ORDER'S CASE-BY-CASE WAIVER PROVISIONS ARE UNDERDEVELOPED AND OF LITTLE CONSOLATION TO VICTIMS OF ABUSE. 31

IV. THE ORDER UNDERMINES THE CRIMINAL JUSTICE SYSTEM. 34

CONCLUSION 39

APPENDIX 1a

TABLE OF AUTHORITIES

Page(s)

Cases

Matter of A-R-C-G-,
26 I&N Dec. 388 (BIA 2014) 3, 4

Elonis v. United States,
135 S. Ct. 2001 (2015) 38

Foley v. Connelie,
435 U.S. 291 (1978) 9

Korematsu v. United States,
323 U.S. 214 (1944) 39

Ex parte Kumezo Kawato,
317 U.S. 69 (1942) 9

Moore v. City of East Cleveland,
431 U.S. 494 (1977) 27

Planned Parenthood of Se. Pennsylvania v. Casey,
505 U.S. 833 (1992) 2, 30

Trump v. State of Hawaii,
No. 16-1540 (Sept. 11, 2017) 33

United States v. Castleman,
134 S.Ct. 1405 (2014) 38

United States v. Hayes,
555 U.S. 415 (2009) 24

United States v. Morrison,
529 U.S. 598 (2000) 2

Statutes

8 U.S.C. § 1001(a)(42) (2013) 11

8 U.S.C. § 1101(a)(15)(T)(i)(I)–(IV) (2013) 24

8 U.S.C. § 1101(a)(15)(U)(i)(I)–(IV) (2013) 24

8 U.S.C. § 1255(l-m) (2013) 25

22 U.S.C. § 7101(b)(5) (2013) 27

Pub. L. No. 96-212, 94 Stat. 102 (1980) 10

Pub. L. No. 106-386, § 1513, 114 Stat. 1464
(2000) 3, 23

Regulations

8 C.F.R. § 214.11(d)(11) 25

8 C.F.R. § 214.11(k)(1) 28

8 C.F.R. § 214.11(k)(2) 28

8 C.F.R. § 214.14(c)(7) 25

8 C.F.R. § 214.14(f)(1) 28

8 C.F.R. § 214.14(f)(2) 28

Executive Orders

Presidential Determination on FY 2002 Refugee Admissions Numbers, 66 Fed. Reg. 63,487 (Dec. 7, 2001) 11

Presidential Determination on Refugee Admissions for Fiscal Year 2017, 81 Fed. Reg. 70,315 (Oct. 11, 2016) 11

Other Authorities

A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, Office of the High Comm'r for Human Rights (Dec. 2013) 17

Ahmed Shaheed, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, U.N. Human Rights Council (Aug. 27, 2014) 16

Alytia A. Levendosky, et al., *The Social Networks of Women Experiencing Domestic Violence*, 34 AM. J. OF CMTY. PSYCHOLOGY 95 (2004) 27

Audrey Sheehy, *Sexual Assault in the Refugee Camp*, HARVARD POLITICAL REVIEW (Oct. 17, 2016) 19

Beth Lubetkin, *Violence Against Women and the U.S. Immigration Laws*, 90 AM. SOC'Y INT'L L. PROC. 616 (1996) 38

Country Reports on Human Rights Practices 2016, U.S. Dep't of State ..... *passim*

Cynthia Helba et al., *Report on Exploratory Study into Honor Violence Measurement Methods* (Nov. 26, 2014) 20

Denise Brennan, *Key Issues in the Resettlement of Formerly Trafficked Persons in the United States*, 158 U. PA. L. REV. 1581 (2010) 29

Domestic Violence National Statistics, National Coalition Against Domestic Violence (2015) 2

Edward M. Kennedy, *Refugee Act of 1980*, 15 INT'L MIGRATION REV. 141 (Spring 1981) 10

Elizabeth M. McCormick, *Rethinking Indirect Victim Eligibility for U Non-Immigrant Visas to Better Protect Immigrant Families and Communities*, 22 STAN. L. & POL'Y REV. 587 (2011) 39

Emma Lazarus, *The New Colossus* (1883) 9

Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence, World Health Organization Dep't of Reproductive Health & Research (2013) 2

Kathy Bosch & M. Betsy Bergen, *The Influence of Supportive and Nonsupportive Persons in Helping Rural Women in Abusive Partner Relationships Become Free From Abuse*, 21 J. OF FAMILY VIOLENCE 311 (2006) 29

Lisa Goodman, et al., *Obstacles to Victims' Cooperation with the Criminal Prosecution of Their Abusers: The Role of Social Support*, 14 VIOLENCE AND VICTIMS 427 (1999) 27

Marija Obradovic, *Protecting Female Refugees against Sexual and Gender-Based Violence in Camps*, U.N. University's Inst. on Globalization, Culture, and Mobility (Oct. 23, 2015) 19

Michele Black et al., *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, Centers for Disease Control and Prevention (2011) 2

National Latin@ Network for Healthy Families and National Domestic Violence Hotline, *Realidades Latinas: A National Survey on the Impact of Immigration and Language Access on Latina Survivors* (April 2013) 35

Refugee Admissions by Region, Historical Arrivals Broken Down by Region, Refugee Processing Ctr., U.S. Dep't of State (Sept. 5, 2017) 11

Refugee Admissions Report, Refugee Processing Ctr., U.S. Dep't of State (July 31, 2017) 5

Refugee Arrivals by State and Nationality, Refugee Processing Ctr., U.S. Dep't of State (Sept. 5, 2017) 5

Special Rep. of the Sec'y-Gen. for Sexual Violence in Conflict, United Nations (Mar. 25, 2015) 15

Survey Reveals Impact of New Immigration Policies on Survivors of Violence, Tahirih Justice Center (May 2017) 36

INTEREST OF AMICI CURIAE[1]

Amici are a coalition of organizations united in the goal of serving survivors of gender-based and domestic violence. *Amici* include nonprofit organizations devoted to remedying domestic violence through legislative, legal, and other initiatives, as well as additional organizations dedicated to serving and supporting survivors of domestic violence. Among other things, they provide shelter, counseling, and advocacy services, as well as serving as leaders in developing and implementing the Violence Against Women Act ("VAWA") and other laws that provide safety and independence for survivors of domestic violence. *Amici* have hundreds of years of collective experience working with such survivors, including extensive efforts to improve both the criminal and civil justice systems' responses to and prevention of domestic violence. They are united in their deep concern that the President's Executive Order 13,780 will endanger immigrant and refugee women and children survivors, who are often the persons most vulnerable to gender-based violence.

---

[1] *Amici* are described in the Appendix to this brief. Pursuant to this Court's Rule 37.6, *amici* state that no counsel representing a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to this Court's Rule 37.3(a), *amici* state that counsel of record for both Petitioners and Respondents have consented to the filing of this brief.

SUMMARY OF THE ARGUMENT

Violence against women and children is a global crisis. Worldwide, one in three women will suffer domestic or sexual abuse in her lifetime.[2] In the United States, a woman is assaulted or beaten every nine seconds.[3] This abuse is often intimate or familial, carried out by the victim's partner or parent.[4] In families where spousal abuse occurs, "child abuse is often present as well."[5] The abuser can dominate the victim's life so fully that any hope for escape is often out of reach—absent a robust system of social and legal support. And any delay in

---

[2] *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, World Health Organization Dep't of Reproductive Health & Research, 2 (2013), http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/.

[3] *Domestic Violence National Statistics*, National Coalition Against Domestic Violence, 1 (2015), http://ncadv.org/files/National%20Statistics%20Domestic%20Violence%20NCADV.pdf.

[4] Michele Black et al., *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, Centers for Disease Control and Prevention, 2 (2011) ("More than 1 in 3 women (35.6%) . . . in the United States have experienced rape, physical violence, and/or stalking by an intimate partner"), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

[5] *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 891 (1992). *See also United States v. Morrison*, 529 U.S. 598, 614 (2000) (noting the "serious impact that gender-motivated violence has on victims and their families").

accessing support can mean severe injury or even death.

For decades the United States has provided such support for its own citizens through an array of social support systems and legal protections, from states criminalizing marital rape, to Congress authorizing, then reauthorizing VAWA, to building a framework of federal protections for domestic violence victims, to creating criminal justice system and community-based responses to gender-based crimes.

While protecting its own, our nation has not closed its eyes, or its doors, to victims of abuse globally. Through VAWA and other legislation, Congress has extended protections to non-citizens, creating new pathways to safety, residency, and citizenship for immigrant, undocumented, and trafficked victims of violence. Congress created the U and T Visa programs, limiting criminals' ability to transform our nation's immigration laws into tools of abuse.[6] Our immigration courts have granted asylum to refugees escaping gender-based violence, demonstrating our nation's commitment to combat such violence by recognizing gender-based persecution as grounds for asylum and refugee status.[7]

---

[6] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533-1537 (2000).

[7] *E.g.*, *Matter of R-A-*, in which three successive U.S. Attorneys General—one Democrat and two Republicans—took personal jurisdiction from the Board of Immigration Appeals

(continued...)

With a pen stroke, the President's Executive Order 13,780 ("the Order") endangers these protections and upends decades of legal and moral leadership.

1. Displaced women and girls seeking refuge from violence bear the Order's brunt. These refugees are victims of the very instability and violence that the Order decries. Among their ranks are those forced from their homes by the atrocities of the Syrian civil war, those seeking refuge from the failed Libyan and Somalian states, those escaping institutionalized misogyny in Iran and elsewhere, those victimized by terrorist brutality in Sudan and Yemen, and those facing forced marriage, gang violence, or rampant domestic violence in Afghanistan, El Salvador, and Burma. The Order, through Section 2(c), singles out six nations where survivors of gender-based violence are particularly imperiled, targeting for exclusion women and children in desperate need of the protections Congress has historically afforded. The Order's 120-day halt to the refugee program (Section 6(a)) condemns victims from these and other nations to continued victimization, stranding them in refugee camps in which gender-based violence of the most gruesome forms—rape of women and children perpetrated by government officials and aid workers—is the daily norm. The Order forces displaced persons in the refugee pipeline—those

---

(continued...)
(proceedings discussed at https://cgrs.uchastings.edu/our-work/matter-r (accessed Sept. 14, 2017)); *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014).

already engaged in an extreme vetting process consuming 18 to 24 months of painstaking diligence—to remain in camps where violence pervades.

The Order's cap on the total number of refugees the United States will accept (Section 6(b)) would compound the impact on women and girls fleeing gender-based violence, impacting most those countries where women and children are most vulnerable. The Department of State recognizes each of the top fifteen origin nations for refugees to the United States so far in 2017[8] as ones where women and girls are victimized by gender-based violence.[9] By the end of July, the Order's cap on refugees had been reached.[10] Implementation of the Order would abruptly close the door to women and girls seeking refuge from violence.

---

[8] *Refugee Arrivals by State and Nationality*, Refugee Processing Ctr., U.S. Dep't of State (Sept. 5, 2017), http://www.wrapsnet.org/s/Arrivals-by-State-and-Nationality-by-Month9517.xls (accessed Sept. 15, 2017).

[9] *Country Reports on Human Rights Practices 2016*, U.S. Dep't of State, § 1(g), https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper (accessed Sept. 15, 2017).

[10] *Refugee Admissions Report*, Refugee Processing Ctr., U.S. Dep't of State (July 31, 2017). *See also U.S. hits refugee limit for 2017*, CBS News (July 12, 2017) ("'We reached the 50,000 cap on refugee admissions on July 12,' said a State Department spokesperson."), https://www.cbsnews.com/news/u-s-hits-refugee-limit-for-2017/ (accessed Sept. 14, 2017).

2. The Order's bar on the entry of any nationals from six Muslim-majority nations (Section 2(c)) would bar all women and girls from those nations who may seek to escape gender-based violence through a range of visa programs. In the name of serving America's public good, the Order perversely works a public travesty by also weakening the specific tools Congress has provided law enforcement to prosecute predators of women and children. The U and T Visa programs are designed to incentivize victims of domestic violence, sexual abuse, and trafficking to aid law enforcement in prosecuting abusers. The Order strips these beneficiaries of social support systems designed by Congress to help survivors of gender-based violence recover from their abuse and reintegrate into society. Survivors with U or T nonimmigrant status will no longer be able to seek derivative visas for family members, denying them an important means of combating the profound isolation that abusers impose through gender-based violence and domestic abuse.

3. The Order includes two case-by-case waiver schemes that purport to temper the harshness of its core provisions. In reality, they provide little consolation to victims of gender-based violence. The waiver provisions are underdeveloped. Waiver decisions in any case are entirely discretionary and unreviewable. Worse, the Order does not expressly include victims of gender-based violence among those eligible for waivers. And the Order elsewhere deepens the murkiness about the waiver process and who will obtain them: on the one hand, it invokes, in one of just two examples of terrorism-related crimes used to justify the ban, the case of a Somali man who entered the United States as a young child refugee

nearly two decades before the crime, but on the other suggests (Section 3(c)(v)) a young Somali child refugee would qualify for a waiver of the ban.

Even were such waivers freely available and accepted at face value, the waiver process would impose bruising evidentiary burdens on applicants—at a time when victims of gender-based violence can least sustain additional hurdles to securing safety.

4. Through its hostile, ungenerous spirit, the Order also creates a broader—and very real—danger to noncitizen women and children survivors of gender-based violence. It sends the message that the United States and its officials are no longer friends to be trusted and turned to for protection and support, but threats to be feared. It compounds aversion to law enforcement, providing abusers yet another tool of control and coercion. This in turn undermines an overriding priority of the T and U visa programs—to cultivate trust and cooperation between survivors and law enforcement to bring criminals to justice. The Order condemns survivors to remain in abusive situations rather than come forward—and exposes our communities to criminals who might otherwise have been brought to justice.

This Court's June 26, 2017 decision to grant the government's stay applications in part excluded from that stay individuals who possess a "close-familial relationship" with persons in the United States. The Court thus reaffirmed the understanding—long reflected in this nation's immigration laws, and in the U and T visa programs' derivative visas in particular—of the central importance placed on family for developing a stable, safe, and nurturing

domestic environment. But many victims of gender-based violence who have sought and obtained safety in the United States do not have those relationships on first arrival here. Indeed, the very purpose of the refugee program is to provide a safe haven to people fleeing what may well be the only place on earth where they have any family—to those who are now profoundly home-less—whether or not they possess any pre-existing connection to the United States.[11] To impose a newfound family nexus requirement would be at odds with the refugee program's nature.

Ours has long been a nation personified by a "mighty woman with a torch, . . . her name Mother of Exiles" who would challenge despots and tyrants to "[s]end these, the homeless, tempest-tost," with her

---

[11] Humanitarian relief, rather than family reunification, has long been—and remains today—the primary purpose of the U.S. Refugee Assistance Program. *See United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities*, U.S. Citizenship & Immig. Servs. (May 5, 2016) (noting "family reunification cases" are "Priority 3" cases, while cases referred by the UNHCR and NGOs and cases involving "groups of special humanitarian concern" constitute "Priority 1" and "Priority 2" cases for the refugee program, respectively), https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities (accessed Sept. 14, 2017). *See also* S. Rep. 96-256 at 1 (1979) (modern U.S. refugee program created with "a new definition of a refugee that recognizes the plight of homeless people all over the world") *and* Miriam Jordan, *With 3 words, Supreme Court opens a world of uncertainty for refugees*, The New York Times (June 27, 2017) ("About four out of 10 refugees who come to the United States have no family ties in the country, according to independent estimates.").

"lamp [lifted]" to welcome them in.[12] Congress has honored this vision by crafting a framework of protections developed over decades across administrations and party lines, one that enables survivors to escape extreme violence and rebuild a life of safety and basic humanity. The Order departs from this salutary vision, to no good end. The harm it will cause—and has already caused—victims of gender-based violence is all too real, as *amici* see in their work every day. It slams the nation's door on displaced women and girls vulnerable and regularly subjected to gender-based violence. It impedes effective police work. It makes Americans and would-be Americans less safe.

Amici respectfully request that this Court affirm the judgments of the courts of appeals.

---

[12] Emma Lazarus, *The New Colossus* (1883). *See also Ex parte Kumezo Kawato*, 317 U.S. 69, 73 (1942) ("Harshness toward immigrants was inconsistent with that national knowledge, present then as now, of the contributions made in peace and war by the millions of immigrants who have learned to love the country of their adoption more than the country of their birth."); *Foley v. Connelie*, 435 U.S. 291, 294 (1978) ("As a Nation we exhibit extraordinary hospitality to those who come to our country, which is not surprising for we have often been described as 'a nation of immigrants.'").

ARGUMENT

I. BY HALTING THE REFUGEE PROGRAM, THE ORDER VICTIMIZES ALREADY VICTIMIZED WOMEN AND CHILDREN.

A. Section 6 disables the United States Refugee Admissions Program in contravention of congressional intent.

Since 1980, victims of persecution have resorted to the United States refugee program to escape extreme discrimination and violence. That year, after fifteen years of congressional debate on refugee challenges posed by conflicts in Southeast Asia, President Carter signed into law the Refugee Act of 1980.[13] In recognition of the United States' "historic policy" of "respond[ing] to the urgent needs of persons subject to persecution in their homelands," Congress established "a permanent and systematic procedure" to admit refugees on a humanitarian basis.[14] "The admission of refugees is a national policy," noted the Act's Senate sponsor, "decided in partnership between the Executive Branch and Congress."[15]

---

[13] Pub. L. No. 96-212, 94 Stat. 102, 102-118 (1980); Edward M. Kennedy, *Refugee Act of 1980*, 15 INT'L MIGRATION REV. 141, 143 (Spring 1981) ("The origins of [the Act] date from hearings conducted during 1965-68 by the Senate Judiciary Subcommittee on Refugees. . . .").

[14] Pub. L. No. 96-212, § 101(a-b), 94 Stat. at 102.

[15] Kennedy, *supra* note 13, at 155-56.

In the decades since, displaced persons facing persecution in their home country, or who had a well-founded fear of persecution if they returned home, have been eligible to apply for refugee status.[16] Six successive presidents have employed this standard to admit over three million refugees.[17] Over this period, the United States has confronted grave threats at home and abroad, including terrorist attacks on our embassies, bombings targeting our soldiers, and the unprecedented massacre of civilians on September 11, 2001. Even after that atrocity, the quota was dropped only by 10,000, or 12.5% of the previous year's cap, and thereafter remained steady for five years, only to be increased again in 2008.[18] Despite those threats, no president has before asserted the need (or the authority) to upend Congress' framework and halt the refugee program in its tracks, and to so suddenly slash the number of refugees permitted—all at a time when the need is so great.[19]

---

[16] 8 U.S.C. § 1001(a)(42) (2013).

[17] *Refugee Admissions by Region, Historical Arrivals Broken Down by Region*, Refugee Processing Ctr., U.S. Dep't of State (Sept. 5, 2017), http://www.wrapsnet.org/s/Graph-Refugee-Admissions-since-19759517.xls (accessed Sept. 14, 2017).

[18] *Annual ORR Reports to Congress–2002: I. Refugee Resettlement Program*, Office of Refugee Resettlement, U.S. Dep't of Health & Human Servs. (Aug. 2014). *See also Presidential Determination on FY 2002 Refugee Admissions Numbers*, 66 Fed. Reg. 63,487 (Dec. 7, 2001).

[19] The Order cuts the ceiling by more than half, from 110,000 annually to just 50,000. *Compare Presidential Determination on Refugee Admissions for Fiscal Year 2017*, 81 Fed. Reg.

(continued...)

B. Survivors of gender-based violence rely on the United States refugee program to escape their abusers.

Survivors of extreme violence, especially gender-based and domestic violence, rely on the refugee program for their very survival. The United Nations High Commissioner for Refugees counts over 21 million refugees and 65 million displaced persons worldwide.[20] Women and children make up the vast majority.[21] Many flee their home countries to escape legal and social infrastructures that actively enable violence against women. For decades, these refugees have sought and found sanctuary in the United States.

Amicus Tahirih Justice Center assisted a young Tajik woman, "F", for example, who lived in an Afghani village raided by the Taliban because of the residents' ethnicity. The Taliban broke into F's home, killed her husband, and broke her teeth and jaw. They beat and raped her repeatedly. They then abducted her son and daughter, five- and three-years-old. Severely traumatized and with no family

---

(continued...)
70,315 (Oct. 11, 2016) *with* Order, § 6(b). *Cf.* Br. for Resp. State of Hawaii, Trump v. State of Hawaii, No. 16-1540, at 13 (Sept. 2017) (the Order "lowers the refugee cap mid-year, in plain violation of Section 1157(a)" of the INA).

[20] *Figures at a Glance*, U.N. High Comm'r for Refugees (Jun. 20, 2016) (33,972 people are forced to flee their homes each day due to persecution and violence), http://www.unhcr.org/en-us/figures-at-a-glance.html (accessed Sept. 14, 2017).

[21] *UNHCR Statistical Yearbook 2014*, U.N. High Comm'r for Refugees, 14th ed., at 64-66 (Dec. 8, 2015).

left, F fled to Pakistan. With Tahirih's help, F ultimately requested admission to the United States as a refugee.

"S" was abducted from her family in Afghanistan, forcibly married, raped, and tortured by the Taliban. She later escaped, after which the Taliban threatened to kill her and her entire family if she did not return to her "marriage." Her sisters lost their jobs, and her father and brothers were beaten near to death as a result. One brother eventually died from his injuries, at age sixteen. The Taliban tried to force S's sisters into marriage as well. But the family fled to Pakistan and sought help from Tahirih in obtaining refuge in the United States.

These examples are not anomalies. They are the daily travesties that characterize the work of *amici*, and the sanctuary and relief *amici* are able to provide courtesy of this country's humane principles and practices.

The Order would end sanctuary and relief. For at least 120 days, the Order shuts the door to refugees worldwide.[22] And likely longer: the refugee program's protections will remain unavailable to refugees from any but those scarce foreign countries that, in the unanimous discretion of the Secretaries of State and Homeland Security and the Director of National Intelligence, have implemented "additional procedures" that are "adequate to ensure the

---

[22] Order, § 6(a).

security and welfare of the United States."[23] War-torn nations without stable governments—like five of the six the Order's Section 2(c) calls out—may never meet that nebulous standard, despite being the nations whose nationals most need refugee protection. The Order thus threatens these nations' victims with *indefinite* exclusion.

Take Syria. Its enduring civil war has incited an epidemic of gender-based violence. In 2016, more refugees—4.9 million—fled Syria than fled any other nation on earth.[24] The United States State Department recently reported that, since the onset of the conflict, Syrian government forces have committed over 7,600 incidents of sexual abuse against Syrian women.[25] These forces exploit civil war as a license to target women for sexual abuse and employ violent rape as a tool of warfare. The State Department's report notes "an increased use of sexual violence against women before granting permission to depart besieged areas or to return with medical supplies and food."[26] Yet under the Order, the very government whose forces are engineering sexual violence would be required to implement "additional procedures" before protections might (emphasis on "might") be reinstated.

---

[23] *Id.*

[24] *Figures at a Glance*, *supra* note 20.

[25] *Country Report*, *supra* note 9, at § 1(g) (Syria).

[26] *Id.*

Somalia is no different. Somali women and girls endure extreme violence from which this Order extinguishes relief. Decades of armed conflict have eroded Somalia's central government. Violent militias have capitalized on the resulting law enforcement vacuum to commit gender-based violence with impunity.[27] These violent acts, among them rape and female genital mutilation and cutting, are often carried out by clan militias, al-Shabaab, members of the national military and police forces, and even soldiers enlisted in the African Union's mission in Somalia.[28] This dire crisis has led more than a million Somalis to flee the country as refugees.[29] Historically, they could seek protection through our nation's refugee assistance program. No longer. The Order strands Somali rape victims in a country where their supposed protectors are often themselves victimizers. Yet it is they, those who speak for the Somali government, who must implement "additional procedures" before its own victims can seek safety in the United States.

Even in more stable nations, legal systems fail to protect—and sometimes actively punish—victims of

---

[27] *Country Report*, *supra* note 9, at § 1(g) (Somalia). ("Government forces, allied militias, men wearing uniforms, and AMISOM troops used excessive force, including torture, and raped women and girls, including IDPs. . . . [I]mpunity was the norm.").

[28] *Id.*; *Somalia*, Special Rep. of the Sec'y-Gen. for Sexual Violence in Conflict, United Nations (Mar. 25, 2015), http://www.un.org/sexualviolenceinconflict/countries/somalia/ (accessed Sept. 14, 2017).

[29] *Figures at a Glance*, *supra* note 20.

gender-based violence. In Iran, women and girls endure misogynistic laws and practices that perpetuate widespread sexual violence.[30] Forced marriages are common, especially for young women.[31] Iranian law does not recognize rape inside marriage.[32] Once married, women are statutorily required to "submit" to their husbands; refusal to have sex is punishable by law.[33] Unmarried victims of sexual violence face implausible evidentiary burdens—a rape victim must proffer as witnesses four Muslim men or a combination of three men and two women or two men and four women[34]—often disabling Iranian courts from providing recourse for victims of even the most brutal rapes. Cruelly, victims who cannot meet this burden after reporting sexual violence are themselves subject to prosecution and barbaric punishment.[35] The Order bars these innocent victims from United States refuge.

---

[30] Ahmed Shaheed, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, U.N. Human Rights Council, at ¶ 18 (Aug. 27, 2014) (66% of Iranian women have experienced domestic violence), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_HRC_34_65_AEV.docx (accessed Sept. 14, 2017).

[31] *Country Report*, *supra* note 9, at § 6 (Iran) (2015).

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* (a woman found to have made a false accusation of rape faces 80 lashes).

Refugees flee many countries other than the six targeted by Order § 2(c) where gender-based and domestic violence are committed with impunity. One is Afghanistan, where violence against women has been criminalized only since 2009.[36] Afghan authorities seldom prosecute reported cases of gender-based violence, instead relying on male-dominated "mediations" to mete out appropriate resolution.[37] Another is Burma, where our own State Department reports that domestic violence is "prevalent and considered socially acceptable."[38] Yet another is El Salvador, where gang violence runs rampant, and gangs "corral[]" women and "dispose[] of [them] at the whims of male gang members."[39] The Order would halt the pathway to refuge for the victims of all of this violence, wherever perpetrated.

---

[36] *Country Report*, *supra* note 9, at § 6 (Afghanistan).

[37] *Id.*; *see also A Way to Go: An Update on Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, Office of the U.N. High Comm'r for Human Rights, 4 (Dec. 2013) (reporting that although 1,669 incidents were reported during one yearlong period, only 109 cases went through the judicial process), https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf (accessed Sept. 14, 2017).

[38] *Country Report*, *supra* note 9, at § 6 (Burma).

[39] *Country Report*, *supra* note 9, at § 6 (El Salvador).

C. By delaying refugee admissions decisions for at least 120 days and lowering the ceiling on refugee admissions, the Order perpetuates violence.

Even were the Administration to restart the refugee program promptly after 120 days, profound, incurable damage will have been done. Delay will expose women and children, many of whom have already endured and satisfied extensive vetting by international and U.S. organizations, to more violence. Women and children face great risk of becoming victims of gender-based, sexual, and domestic violence while in refugee camps awaiting U.S. refugee admission status. U.N. officials have registered alarm about this "deplorable and persistent trend":

> [F]emale refugees across the world are highly vulnerable to all forms of sexual and physical violence. In addition to the dangers women face from contesting armed groups, once on the move from the conflict zone, they are also at risk of being brutalized by human traffickers or even border security forces. Even after exiting the conflict zone, safety can be elusive: staying in a refugee camp within the country of origin or seeking protection

> elsewhere brings serious threats to women's security, freedom and health.[40]

Rape, sexual assault, and subjugation plague refugee camps, perpetrated by male refugees and, alarmingly, by camp administrators.[41] Executive Branch agencies themselves acknowledge that many prospective refugees have already endured these deplorable conditions for months, if not years.[42]

---

[40] Marija Obradovic, *Protecting Female Refugees against Sexual and Gender-Based Violence in Camps*, U.N. University's Inst. on Globalization, Culture, and Mobility (Oct. 23, 2015), https://ourworld.unu.edu/en/protecting-female-refugees-against-sexual-and-gender-based-violence-in-camps (accessed Sept. 14, 2017).

[41] Audrey Sheehy, *Sexual Assault in the Refugee Camp*, HARVARD POLITICAL REVIEW (Oct. 17, 2016) ("No woman or girl is safe in a refugee camp, because rape is a weapon for war and power. . . . Many rapes in refugee camps occur while women are receiving rations, running daily errands, or sleeping in mixed gendered settlements. . . . [P]ublic officials working in the camps and humanitarian staff also sometimes assault women refugees."); Mark Hanrahan, *Refugee Crisis: Women, Children Report Sexual Violence, Abuse on Migration Trail, Says UN*, NBC News (Feb. 28, 2017) ("[T]hree quarters of refugee and migrant children who took part in a survey said that they had experienced violence or harassment at the hands of adults during their journey, while nearly half of both women and children interviewed reported suffering sexual abuse, often on multiple occasions."), http://www.nbcnews.com/news/world/refugee-crisis-women-children-report-sexual-violence-abuse-migration-trail-n726731 (accessed Sept. 14, 2017).

[42] *U.S. Refugee Program FAQs*, U.S. Dep't of State (Jan. 20, 2017) ("[T]he average processing time is about 18 to 24 months from UNHCR referring a refugee to the U.S. for consideration,

(continued...)

The top fifteen countries of origin from which refugees have been admitted to the United States thus far in 2017[43] are all countries cited by the State Department for gender-based violence and abuse.[44] The majority of those refugees originated from Iraq, Syria, Somalia, and the Democratic Republic of the Congo, nations where women and children face gender-based killings, forced marriage, and weaponized rape and other forms of sexual violence.[45] Requiring these women and girls to show a "bona fide relationship" to someone already in the

---

(continued...)
through the U.S. Government's screening and processing of the applicant, to [its] granting admission to the refugee."), https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm (accessed Sept. 14, 2017).

[43] *See Refugee Arrivals by State and Nationality*, *supra* note 8.

[44] *Country Reports*, *supra* note 9, § 6.

[45] *Id.* The Order professes concern for the occurrence of "acts of gender-based violence against women, including so-called 'honor killings,' in the United States by foreign nationals," directing the Secretary of Homeland Security and Attorney General to collect and publish data about the "number and type[]" of any such acts. Order § 11(a)(iii). A 2014 report commissioned by the U.S. Department of Justice, however, indicated that "cases of any type of honor violence appear to be rare in comparison to other types of crime in the United States." Cynthia Helba et al., *Report on Exploratory Study into Honor Violence Measurement Methods*, at 1-1 (Nov. 26, 2014), https://www.ncjrs.gov/pdffiles1/bjs/grants/248879.pdf (accessed Sept. 15, 2017). And the Order points to nothing to suggest otherwise. But in a sad irony, the Order would condemn refugee victims to remain in nations where these crimes are known to be far too common and where victims encounter significant obstacles to seeking safety and protection. *Country Reports*, *supra* note 9, § 6.

United States would exclude many from relief. Lowering the cap on the number of refugees to be admitted to the United States will likewise ensure that many remain in harm's way. And doing so now, in the midst of a surge in refugees from Muslim-majority nations like Syria, will inflict disproportionate harm on Muslim women and children.

The Order excepts from its ban those refugees for whom the State Department has already arranged travel.[46] Yet many thoroughly vetted candidates who have completed most (and even all) of the State Department's pre-admission requirements will still be excluded. Before scheduling transit to the United States, a prospective refugee must: (1) undergo screenings and interviews by the U.N. High Commissioner for Refugees; (2) secure a UNHCR referral to the U.S. refugee screening agencies (which only one percent of applicants receives); (3) pass rigorous biographic security checks; (4) clear interviews with the FBI, DHS, State Department, and National Counterterrorism Center (all which subject refugees, especially those from Syria, to heightened screening criteria); (5) pass a biometric identifier screen with the FBI, DHS, and Defense Department; (6) undergo and pass a comprehensive medical evaluation; (7) complete a course of cultural orientation classes to prepare for life in the United States; and (8) collaborate with refugee program authorities to

---

[46] Order, § 6(a).

determine a resettlement location.[47] The Order blocks even applicants who have successfully completed all of these steps, stranding them in refugee camps and condemning them to further abuse.

II. SECTION 2(C) IMPERILS VICTIMS OF GENDER-BASED VIOLENCE AND UNDERMINES LAW ENFORCEMENT.

Amici regularly serve women and children from the six nations targeted by Section 2(c) who could not have been served had the Order been in place. Tahirih, for example, has assisted numerous women who obtained asylum or special immigrant juvenile status here upon fleeing one of those countries after having been subjected to forced child marriage, female genital mutilation, or other forms of gender-based violence. These women and girls arrived in the United States before the Order was signed, through a variety of immigration programs. One mother, for example, saved her then thirteen-year-old daughter, Muna, from forced marriage in Yemen under the cover of night, taking her daughter to accompany her for cancer treatment she had arranged in the United States.[48] Women like Muna

---

[47] *U.S. Refugee Admissions Program: Applications and Case Processing*, U.S. Dep't of State, https://www.state.gov/j/prm/ra/admissions/ (accessed Sept. 17, 2017).

[48] *Success Stories, Muna*, Tahirih Justice Center, http://www.tahirih.org/success_stories/muna/ (accessed Sept. 17, 2017).

and her mother would never have made it here had the Order been in place.

The Order's blanket ban on entry for nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen will endanger survivors of gender-based and domestic violence from those nations regardless of the type of visa by which they would have entered the United States—whether for medical treatment, as tourists, students, guest workers, or otherwise. Among the avenues to safety Section 2(c) jeopardizes are programs Congress designed specifically to empower such survivors and make our communities safer—the T and U Visa programs.

A. Congress designed the T and U Visa programs to empower immigrant survivors of gender-based and domestic violence and to make our communities safer.

Congress created T and U nonimmigrant status when it passed the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA").[49] The bill recognized that unauthorized immigrants—particularly women and children—were vulnerable to gender-based violence because their fear of deportation could outweigh their determination to seek justice. To that end, the legislation created a sensible *quid pro quo*, whereby survivors were permitted legally to remain in the United States provided they assisted law enforcement in prosecuting their abusers and traffickers. Criminals

---

[49] Pub. L. No. 106-386, *supra* note 6.

could no longer wield immigration law against their victims with impunity.

Survivors of "severe forms of trafficking in persons," such as sex and forced labor trafficking, are granted nonimmigrant status under the T program. In addition to being a trafficking survivor, those granted T program status must be present in the United States because of trafficking, agree to assist law enforcement in the prosecution or investigation of trafficking, and show that they will experience extreme hardship if removed.[50] Meanwhile, survivors of domestic abuse and sexual assault, as well as other enumerated crimes, can access nonimmigrant status through the U program. Eligible survivors must have suffered "substantial physical or mental abuse" as a result of the crime, possess information about it, be willing to assist law enforcement in the investigation and prosecution of the offender, and demonstrate that the crime occurred in the United States or violated a law over which it has extra-territorial jurisdiction.[51]

The T and U status programs empower survivors by encouraging them to seek assistance from law enforcement rather than avoid it for fear of deportation. These survivors can then freely and without fear serve as witnesses in prosecutions that are otherwise too rare,[52] making communities safer.

---

[50] 8 U.S.C. § 1101(a)(15)(T)(i)(I)–(IV) (2013).

[51] 8 U.S.C. § 1101(a)(15)(U)(i)(I)–(IV) (2013).

[52] *See United States v. Hayes*, 555 U.S. 415, 426 (2009) ("[M]any people who engage in serious spousal or child abuse ultimately

(continued...)

This is an important animating purpose of the programs.[53] It is not the sole purpose, however. Congress also meant to provide survivors with the means to rebuild their lives and reintegrate into their communities. The programs enable survivors to seek employment.[54] They create pathways to lawful permanent resident status after continued residence in the United States.[55] And because recovery for survivors is often best accomplished through the nurturing domestic environment that family can provide, Congress authorized survivors to seek derivative status for family members overseas.

The Order wreaks havoc on this carefully constructed program.

B. Section 2(c) impairs a critical form of humanitarian relief offered by the T and U visa programs—family reunification through derivative visas.

The Order, on taking effect, imposes an immediate travel and entry ban on nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen.

(continued...)
are not charged with or convicted of felonies."), *quoting* 142 Cong. Rec. 22985 (1996).

[53] *E.g.* H.R. Rep. No. 106-487, at 4 (1999) ("[T]o deter international trafficking and to bring its perpetrators to justice, nations . . . must . . . giv[e] the highest priority to investigation and prosecution of trafficking offenses, and . . . protect[] rather than punish[] the victims of such offenses.").

[54] 8 C.F.R. § 214.11(d)(11); 8 C.F.R. § 214.14(c)(7).

[55] 8 U.S.C. § 1255(l-m) (2013).

Nationals of these countries who are outside the United States and did not have a valid visa on January 27, 2017, or on the Order's effective date, cannot enter the United States.[56] There are limited exceptions. The entry ban does not apply to lawful permanent residents, foreign nationals admitted or paroled into the United States after the Order's effective date, or foreign nationals with advance parole or an equivalent document granting entry.[57] The Order also purports to grant consular officers and Customs and Border Patrol ("CBP") officials discretionary case-by-case waiver authority if a foreign national can make certain demonstrations.[58] Even were discretion exercised—and there is credible reason to doubt it will be—the Order's scheme is woefully inadequate.

The travel ban would cripple the T and U status programs and harm the very victims of violence Congress intended them to help. A strong network of support helps survivors of gender-based violence

---

[56] Order, § 3(a).

[57] Order, § 3(b).

[58] Order, § 3(c)(iv) (waiver permissible if (1) denial of entry during the suspension would cause undue hardship, (2) the foreign national's entry would not pose a national security threat, and (3) such entry would be in the national interest). The Order describes scenarios in which a waiver could be appropriate, including when a foreign national seeks entry to be reunited with "a close family member . . . admitted on a valid nonimmigrant visa. . . .]").

recover and reintegrate into society.[59] For immigrant women and children who find themselves strangers in a strange land upon escaping their abusers, this social construct may be available only through reunification with family. Congress recognized this, and provided in the VTVPA that individuals with T or U status could obtain derivative visas for family members residing overseas.[60] Congress' endorsement of the centrality of family for survivors echoes the value placed on the family institution by our Constitution and in our laws.[61]

Generally, an individual granted T or U nonimmigrant status can petition United States Citizenship and Immigration Services ("USCIS") for certain family members to receive derivative

---

[59] Alytia A. Levendosky, et al., *The Social Networks of Women Experiencing Domestic Violence*, 34 AM. J. OF CMTY. PSYCHOLOGY 95, 106 (2004); Lisa Goodman, et al., *Obstacles to Victims' Cooperation with the Criminal Prosecution of Their Abusers: The Role of Social Support*, 14 VIOLENCE AND VICTIMS 427, 429 (1999) (survivors may hesitate to cooperate with law enforcement because they fear losing their abusers' social and economic support).

[60] 22 U.S.C. § 7101(b)(5) (2013) ("Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends . . . and other sources of protection and support, leaving the victims defenseless and vulnerable.").

[61] *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) ("[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition.").

status.[62] In the U Visa program, derivative visas are available for the survivor's spouse, children, and unmarried siblings under age eighteen.[63] If the survivor is younger than age twenty-one, she can petition for derivative status for her parents.[64] In the T Visa program, a survivor over twenty-one can petition for derivative visas for her spouse and children, while a survivor under twenty-one can also petition for derivative visas for her parents.[65] The survivor must demonstrate that the individual for whom she seeks derivative status is an eligible family member and is admissible to the United States. If USCIS denies an application, it must do so in writing, providing the survivor with an opportunity to file an administrative appeal.

The Executive Order upends this carefully calibrated statutory framework. By its terms, if a survivor's family members are nationals of one of the six enumerated countries, they will be banned from entering the United States. Nor can the Order's vague waiver mechanism be considered a meaningful stand-in for the statutory derivative visa program, as it imposes a heightened evidentiary burden on the individual seeking entry. Rather than observe the existing statutory requirement that the survivor demonstrate familial eligibility and admissibility, the family member must now satisfy

---

[62] 8 C.F.R. § 214.11(k)(2); 8 C.F.R. § 214.14(f)(2).

[63] 8 C.F.R. § 214.14(f)(1).

[64] *Id.*

[65] 8 C.F.R. § 214.11(k)(1).

the ill-defined requirement of proving that her or his entry would not pose a national security threat to the United States *and* would be in the nation's interest. Worse, the consular or CBP official's decision not to issue a waiver is unappealable. There is thus appreciable risk that family members who wish to enter the United States under U or T visa derivative status will be turned away, without recourse.

The resulting risk to survivors is grave. The support provided by family members can help a survivor overcome trauma and reconstruct her identity after leaving her abuser. Through family, she can begin to shed the label "victim" and re-identify as "mother," "parent," or "sister." This ability both to nurture family members, and be nurtured by them, begins to free survivors from the isolation that accompanies their abuse.[66] The presence of a family member also provides physical protection against retaliation by the abuser. And, in instances where a survivor can obtain a derivative visa for a parent, the parent's presence can prevent her from sliding into poverty.[67] A parent can assist

---

[66] Kathy Bosch & M. Betsy Bergen, *The Influence of Supportive and Nonsupportive Persons in Helping Rural Women in Abusive Partner Relationships Become Free From Abuse*, 21 J. OF FAMILY VIOLENCE 311, 311 (2006) ("Social support reduces the isolation that many abusers enforce, and is a major factor in helping women become safe and free from abuse.").

[67] Denise Brennan, *Key Issues in the Resettlement of Formerly Trafficked Persons in the United States*, 158 U. PA. L. REV. 1581, 1583 (2010) (T visa recipients are usually locked into "low-paying and insecure jobs" even after receiving

(continued...)

with chores and child care, providing the survivor a base of domestic support necessary for her to become economically self-reliant and preventing an economically-driven return to abusive relationships.

The presence of family can also allay a survivor's often justified concern that her family members are not safe overseas. An abuser or trafficker often will have connections in the survivor's native country. Threats to the family's well-being can be every bit as coercive as threatening a survivor with deportation. Likewise, an underage survivor's ability to obtain derivative status for her parents can rebuild the family structure, preventing a survivor from becoming a ward of the state and staving off continued abuse.

For survivors of violence, who so often are left in precarious circumstances after escaping their abusers, even the Order's three months of "temporary" delay will cause extreme hardship. Three months for a victim can be a lifetime—or the end of one.[68] The immediate presence of family can mean the difference between recovery and more suffering.

(continued...)
nonimmigrant status due, in part, to a lack of social networks and support).

[68] *Casey*, 505 U.S. at 892 ("Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income.").

III. THE ORDER'S CASE-BY-CASE WAIVER PROVISIONS ARE UNDERDEVELOPED AND OF LITTLE CONSOLATION TO VICTIMS OF ABUSE.

The Order identifies certain categories of foreign nationals and refugees who may qualify for "case-by-case" admission at the discretion of the Secretaries of State and Homeland Security.[69] This discretionary and unreviewable waiver regime poses at least three problems for the populations *amici* serve.

First, victims of gender-based violence are excluded altogether from those the Order suggests may qualify for waivers.

Second, public evidence unfortunately reveals this waiver provision to be just dressing—an attorney sleight-of-hand to inoculate the Order from legal challenge.[70] The Order's internal inconsistency alone betrays the waiver provisions' emptiness. As one of only two specific examples of terrorism-related crimes used to justify the refugee ban, the Order cites the 2014 conviction of "a native of Somalia who had been brought to the United States as a child

---

[69] Order, §§ 3(c) and 6(c).

[70] Donald J. Trump, White House Press Conference (Feb. 16, 2017) ("[T]he new order is going to be very much tailored to what I consider to be a very bad decision. . . ."); Donald J. Trump, Nashville, Tenn. (March 15, 2017) ("The order he blocked was a watered down version of the first order that was also blocked by another judge and should've never been blocked to start with.").

refugee."[71] This refers to Mohamed Osman Mohamud, born in 1991, who fled Somalia with his family in early 1992 to a Kenyan refugee camp.[72] In October 1993, the United States allowed his father, a university professor who speaks five languages, to resettle in this country.[73] When Mohamud was five, the United States permitted him and his mother to join his father in Portland.[74] Presented with the identical situation today, two of the Order's "case-by-case waiver" provisions would suggest that the State Department should admit Mohamud to the United States.[75] Yet by offering Mohamud as an example of the problem the Order is supposedly addressing, it suggests that he would have been excluded as a young child had the Order then been law. This confusion should give this Court no comfort that the waiver provisions can cure what ails the Order. Nor can survivors of gender-based violence rest secure that waiver provisions so vague and indeterminate

---

[71] Order, § 1(h).

[72] Lynne Terry, *Family of Portland's bomb suspect, Mohamed Mohamud, fled chaos in Somalia for new life in America*, The Oregonian (Dec. 4, 2010), http://www.oregonlive.com/portland/index.ssf/2010/12/suspect_in_portland_bomb_plot.html.

[73] *Id.*

[74] *Id.*

[75] Order, § 3(c)(iv) (waiver appropriate when "the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent)" with long-term permission to remain in the United States) *and* Order, § 3(c)(v) (waiver appropriate when "foreign national is an infant, a young child or adoptee").

will preserve the protections Congress specifically created for providers through the T and U programs.

Even if the waiver provisions are accepted at face value, the waiver process imposes heavy evidentiary burdens on applicants. As the Hawaii Respondents noted below, "[a]ll aliens covered by the Order—including refugees who are themselves seeking to escape violence—are presumptively excluded as potential terrorists . . . [and] must seek admission based on an intricate scheme of categorical exemptions and case-by-case waivers."[76] These burdens are now compounded by the imperative, under the Court's stay decision, to prove they possess a "bona-fide relationship" with someone already in the United States. And for T or U status holders seeking derivative visas for family members, the Order's waiver scheme presents additional hurdles that would delay family reunification. This is no small matter when reunification, by Congress' design, could provide a gender-based violence survivor the social support and protection she needs.

---

[76] Mem. Supp. Pl.'s Mot. TRO at 39, *State of Hawaii v. Trump*, No. 1:17-cv-00050-DKW-KJM (D. Haw. Mar. 8, 2017), ECF No. 65. *See also* Br. for Resp. State of Hawaii, *Trump v. State of Hawaii*, No. 16-1540, at 8 (Sept. 11, 2017) (second Order "was largely unchanged from the first ... Most nationals of these [six] countries may escape the ban only by obtaining a wholly discretionary, '[c]ase-by-case waiver'").

IV. THE ORDER UNDERMINES THE CRIMINAL JUSTICE SYSTEM.

The Order also imperils the safety of immigrant survivors of gender-based and domestic violence currently in the United States by stoking a fear of law enforcement. While not affecting their legal status in name, the Order reinforces a growing anxiety among undocumented survivors that any interaction with government institutions may subject them to deportation. When viewed in conjunction with other fear-inducing government actions—the Administration's promise to deport eleven million undocumented immigrants,[77] its executive order on removal priorities,[78] its recently announced rescission of the Deferred Action for Childhood Arrivals program,[79] and ICE's invasions

---

[77] Andy J. Semotiuk, *What Trump's presidency means for illegal immigrants and immigration to the U.S.*, Forbes (Nov. 10, 2016) (noting President Trump's intent to deport 11 million illegal immigrants), www.forbes.com/sites/andyjsemotiuk/2016/11/10/what-trumps-presidency-means-for-illegal-immigrants-and-immigration-to-the-u-s/#47ebb17347eb; Jeremy Diamond, *Trump orders construction of border wall, boosts deportation force*, CNN (Jan. 25, 2017), http://www.cnn.com/2017/01/25/politics/donald-trump-build-wall-immigration-executive-orders/.

[78] Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

[79] U.S. Department of Justice, Attorney General Sessions Delivers Remarks on DACA (Sept. 5, 2017), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca.

of the sanctity of the courtroom[80]—the effects on undocumented survivors of domestic violence may be profound.[81] Victims may well choose to remain in the shadows rather than seek justice or cooperate with local law enforcement.[82] The Order discourages

---

[80] Marty Schladen, *ICE detains alleged domestic violence victim*, El Paso Times (Feb. 15, 2017) (ICE arrested undocumented victim of domestic abuse as she left the courtroom where she had just obtained a protective order from her abuser, apparently based on that abuser's tip), http://www.elpasotimes.com/story/news/2017/02/15/ice-detains-domestic-violence-victim-court/97965624/; Beth Fertig, *Outcry after immigration agents seen at Queens human trafficking court*, WNYC News (Jun. 16, 2017), http://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/ (accessed Sept. 14, 2017).

[81] P.R. Lockhart, *Immigrants fear a choice between domestic violence and deportation*, Mother Jones (Mar. 20, 2017), http://www.motherjones.com/politics/2017/03/ice-dhs-immigration-domestic-violence-protections.

[82] Heidi Glenn, *Fear of deportation spurs 4 women to drop domestic abuse cases in Denver*, NPR (Mar. 21, 2017), http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver; National Latin@ Network for Healthy Families and National Domestic Violence Hotline, *Realidades Latinas: A National Survey on the Impact of Immigration and Language Access on Latina Survivors* (April 2013), http://www.nationallatinonetwork.org/images/files/NLNRealidades_Latinas_The_Impact_of_Immigration_and_Language_Access_FINAL.pdf; James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, Los Angeles Times (Mar. 16, 2016), http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html (describing apprehension of (continued...)

the very cooperation the T and U visa programs are intended to foster.

These effects are not hypothetical; *amici* serve women and girls who have encountered precisely these fears since the Order was issued.

For example, earlier this year, after the Order was announced, a 16-year-old survivor in Pennsylvania attempted suicide rather than report a crime against her because she feared the offender would report her and her family to ICE. Similarly, a survivor in Nevada informed advocates that she would not report her boss for sexual harassment due to her immigration status. And in Minnesota, an immigrant victim of assault and robbery refused to report the crime to police for fear of deportation.[83]

Indeed, as documented in a May 2017 survey conducted by seven national organizations providing services to victims of gender based violence (including *amici*), 78 percent of advocates reported that immigrant survivors expressed concerns about

---

(continued...)
undocumented immigrant by ICE on the Pasadena courthouse steps).

[83] These examples were reported confidentially in response to a survey conducted in May 2017. *See Survey Reveals Impact of New Immigration Policies on Survivors of Violence*, Tahirih Justice Center, http://www.tahirih.org/news/survey-reveals-impact-of-new-immigration-enforcement-policies-on-survivors-of-violence/ (accessed Sept. 1, 2017). A total of 715 victim advocates and attorneys in 46 states and the District of Columbia completed th survey.

contacting police.[84] Three in four service providers responding to the survey reported that immigrant survivors have concerns about going to court for a matter related to the abuser or offender. Forty-three percent of advocates worked with immigrant survivors who dropped civil or criminal cases because they were too afraid to press them.

This widespread fear of deportation as a consequence of reporting crime is not unreasonable—in Washington, a victim of abuse was deported shortly after she reported the abuse against her. And law enforcement officials, including the police chiefs in Houston and Los Angeles, themselves have noted the significant drop in reports of abuse and violence from neighborhoods of immigrant concentration.[85]

---

[84] *Id.*

[85] James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, Los Angeles Times (Mar. 21, 2017), http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html (accessed Sept. 14, 2017) (citing Los Angeles Police Chief Charlie Beck's statements "that reports of sexual assault and domestic violence made by the city's Latino residents have plummeted this year amid concerns that immigrants in the country illegally could risk deportation by interacting with police or testifying in court."); Lindsey Bever, *Hispanics 'are going further into the shadows' amid chilling immigration debate, police say*, Washington Post (May 12, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.0a8565583f25 (accessed Sept. 14, 2017) (quoting Houston Police Chief Art Acevedo: "It looks like

(continued...)

This growing fear and distrust imperils the lives of immigrant survivors. Often, the fear of being deported and separated from family is all that prevents an undocumented survivor from leaving her abuser.[86] That fear can be wielded as yet another tool of coercion and control in an abuser's hands.[87] And domestic abuse is a crime that tends to escalate over time.[88] The longer a survivor remains with her abuser, the more likely it is she will be seriously injured or killed. By intensifying a distrustful atmosphere, the Order deters undocumented survivors from seeking help from law enforcement, placing them in increased danger.

(continued...)
they're going further into the shadows, and there appears to be a chilling effect in the reporting of violent crime by members of the Hispanic community"); John Burnett, New immigration crackdowns creating "chilling effect" on crime reporting, NPR (May 25, 2017), http://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting (accessed Sept. 14, 2017).

[86] Beth Lubetkin, *Violence Against Women and the U.S. Immigration Laws*, 90 AM. SOC'Y INT'L L. PROC. 616, 620 (1996) ("Fear of deportation deters abused immigrant woman from coming forward to report abuse. Just as with abuse victims who are not immigrants, batterers threaten that they will take custody of minor children. For immigrant women, that threat is all the more frightening when they are unfamiliar with the U.S. justice system, may not speak English and fear they will never see their children again if separated from them through deportation.").

[87] *Elonis v. United States*, 135 S. Ct. 2001, 2017 (2015) ("Threats of violence and intimidation are among the most favored weapons of domestic abusers . . . .").

[88] *United States v. Castleman*, 134 S.Ct. 1405, 1408 (2014) ("Domestic violence often escalates in severity over time . . . .").

This dynamic does not only endanger the immigrant survivors themselves. When victims of gender-based and domestic violence avoid cooperating with law enforcement to bring their abusers to justice, communities are less safe. As former New York City Mayor Rudy Guiliani remarked, "If you are an illegal immigrant . . . and a crime is committed against you, I want you to report that, because lo and behold, the next time a crime is committed, it could be against a citizen or a legal immigrant."[89] The public has a strong interest—reflected in the T and U visa framework established by Congress—in ensuring that undocumented immigrant survivors trust and not fear law enforcement.

CONCLUSION

Some of the darkest blots on our nation's history have occurred when, in times of national fear, the Executive Branch has targeted the innocent to promote what it declares to be the public's safety. *See, e.g.*, *Korematsu v. United States*, 323 U.S. 214, 218 (1944). By contrast, what has made our constitutional order the world's envy are those other moments when, even in times of fear—*especially* then—we stand on our founding principles and protect the innocent. This Order is an unfortunate example of the former. It would subvert Congress' intent to extend protection and support to foreign

---

[89] Elizabeth M. McCormick, *Rethinking Indirect Victim Eligibility for U Non-Immigrant Visas to Better Protect Immigrant Families and Communities*, 22 STAN. L. & POL'Y REV. 587, 599–600 (2011).

national victims of gender-based and domestic violence where it is needed most. It would subvert the public interest in helping those survivors and enlisting their help in turn to bring criminals to justice. It would turn a blind eye to the world's innocent women and girl victims. It would depart profoundly from our nation's historical humanitarian bent. It would not, and should not, make us proud.

Amici support Respondents' positions and respectfully request that this Court affirm the judgments of the courts of appeals.

Respectfully submitted,

SCOTT L. WINKELMAN
Counsel of Record
LUKE VAN HOUWELINGEN
DALAL HASAN
AVI RUTSCHMAN
JUSTIN D. KINGSOLVER
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2500
swinkelman@crowell.com

Counsel for Amici Curiae

APPENDIX

APPENDIX

IDENTITIES AND INTERESTS OF *AMICI CURIAE*

The following organizations respectfully submit this brief as Amici Curiae in support of Respondent, and urge this to Court affirm the judgments of the courts of appeals.

Tahirih Justice Center ("Tahirih") is a national non-profit legal and social services provider that has served courageous individuals fleeing gender-based human rights abuses since 1997. Through direct services, policy advocacy, and training and education, Tahirih protects immigrant women and girls and promotes a world where they can enjoy equality and live in safety and dignity. Tahirih serves immigrant women and girls who have rejected violence, but face incredible obstacles to justice, including language barriers, lack of resources, and a complex immigration system.

The **Asian Pacific Institute on Gender-Based Violence** is a national resource center on domestic violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities, including domestic violence dynamics in refugee zones. The institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander survivors, and is a leader on providing analysis on

critical issues facing victims in the Asian and Pacific Islander community. The institute aims to strengthen advocacy, change systems, and prevent gender violence through community transformation.

Casa de Esperanza seeks to mobilize Latinas and Latino communities to end domestic violence. Founded in 1982 to provide emergency shelter for women and children experiencing domestic violence in Minnesota, in 2009 Casa de Esperanza launched the National Latin@ Network for Healthy Families and Communities. The National Latin@ Network is a national institute focused on preventing and addressing domestic violence in Latino communities. It organizes national and regional events and provides training and consultations to practitioners and advocates throughout the United States, as well as in Latin America. The organization also engages in federal and state public policy advocacy and conducts research on issues that affect Latino communities.

The **National Domestic Violence Hotline** ("NDVH") was established in 1996 as part of the Violence Against Women Act ("VAWA"). It operates a free, anonymous and confidential, around-the-clock hotline available via phone, internet chat, and text services to offer victims of domestic violence compassionate support, crisis intervention, safety planning and referral services to enable them to find safety and live lives free of abuse. A substantial number of the victims NDVH serves are immigrants or request help related to immigration-related issues. From May 2015 through March 2017, for example, over 10,000 victims contacted NDVH

identifying as immigrants and over 6,500 of them sought help related to immigration concerns.

ASISTA Immigration Assistance ("ASISTA") worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 VAWA and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security ("DHS") personnel charged with implementing these laws, most notably Citizenship and Immigration Services ("CIS"), Immigration and Customs Enforcement ("ICE"), and DHS's Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs to the Supreme Court and to the Second, Seventh, Eighth, and Ninth Circuits.

Break the Cycle is the leading national non-profit organization providing comprehensive dating abuse programming exclusively focused on young people ages 12-24. Founded in 1996 to fill a gap in services for young people experiencing abuse in dating relationships in Los Angeles, California, Break the Cycle expanded nationally in 2004. Today the organization trains law enforcement officers, judges, advocates, attorneys, educators, counselors, and parents across the United States on how to promote healthy youth relationships and serve young survivors of all backgrounds. Break the Cycle also trains peer educators to work with young people

in their communities to end dating abuse. Finally, Break the Cycle helps young survivors of dating abuse, domestic violence, sexual assault, and stalking in Washington, DC navigate the justice system and find safety through direct legal representation in civil protection order and related legal matters. The organization is guided by Let's Be Real youth leaders across the United States.

Futures Without Violence ("FUTURES"), formerly the Family Violence Prevention Fund, is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children around the world. FUTURES mobilizes concerned individuals; children's, women's, and civil rights groups; allied professionals; and other social justice organizations to end violence through public education and prevention campaigns, public policy reform, training and technical assistance, and programming designed to support better outcomes for women and children experiencing or exposed to violence. FUTURES joins with the other *amici* because it has a long-standing commitment to supporting the rights and interests of women and children who are victims of crime regardless of their immigration, citizenship, or residency status. FUTURES co-founded and co-chaired the National Network to End Violence Against Immigrant Women working to help service providers, survivors, law enforcement, and judges understand how best to work collaboratively to bring justice and safety to immigrant victims of violence. Using this knowledge, FUTURES helped draft legislative recommendations that were ultimately included in VAWA and the Trafficking Victims Protection Act to assist immigrant victims of

violence. FUTURES participates in the Alliance to End Slavery and Trafficking and co-chairs the Coalition to End Violence Against Women and Girls Globally, partnering with other national organizations to reduce sexual and domestic violence against women and children.

Legal Momentum, the Women's Legal Defense and Education Fund, is the oldest women's legal advocacy group in the United States. Legal Momentum served at the helm of the National Task Force to End Sexual and Domestic Violence Against Women, which led efforts to pass VAWA in 1994, and its subsequent reauthorizations in 2000, 2005 and 2013. Since VAWA's inception, Legal Momentum has assisted the U.S. Department of Justice, federal agencies, state and local governments, and private entities with developing and implementing policies to protect victims of domestic and intimate partner violence. Additionally, since 1980, Legal Momentum's National Judicial Education Program has educated and trained thousands of judges and court officials nationwide on gender bias issues related to domestic and partner violence.

The **National Alliance to End Sexual Violence** ("NAESV") is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. The rape crisis centers in NAESV's network see every day the widespread and devastating impacts of sexual assault upon survivors, especially those in immigrant communities. We oppose any

impediments to survivors feeling safe to come forward, receive services, and seek justice.

The **National Coalition Against Domestic Violence** is the voice of victims and survivors. We are the catalyst for changing society to have zero tolerance for domestic violence. We do this by effecting public policy, increasing understanding of the impact of domestic violence, and providing programs and education that drive that change.

The **National Coalition of Anti-Violence Programs** ("NCAVP") works to prevent, respond to, and end all forms of violence against and within lesbian, gay, bisexual, transgender, and queer ("LGBTQ") communities. We strive to increase power, safety, and resources through data analysis, policy advocacy, education, and technical assistance. Many of our member programs provide LGBTQ immigration specific services, including legal services, counseling and support, and advocacy. NCAVP is a national coalition of over 50 local member programs and affiliate organizations who provide services to and advocacy for LGBTQ survivors of violence, including many LGBTQ immigrant survivors. Our member programs continue to see an increase in the number of LGBTQ immigrants reporting violence and accessing their services. For example, the percentage of undocumented LGBTQ survivors of intimate partner violence reporting to NCAVP programs increased from 4% in 2014 to 9% in 2015. The issues involved in this case will have significant implications for the clients that NCAVP member programs serve.

The **National Immigrant Justice Center** ("NIJC") is a Chicago-based national non-profit organization that provides free legal representation to low-income refugees and asylum seekers. In collaboration with pro bono attorneys, NIJC represents hundreds of applicants for U visas, T visas, asylees, and refugees at any given time, before the Asylum Office, the immigration courts, the Board of Immigration Appeals, and the federal courts. In addition to the cases that NIJC accepts for representation, it also screens and provides legal orientation to hundreds of potential asylum applicants every year.

The **National Indigenous Women's Resource Center** ("NIWRC") is a national non-profit organization dedicated to increasing safety and access to justice for American Indian, Alaska Native, and Native Hawaiian women and girls who have been victimized by domestic violence, sexual assault, sex trafficking, and other crimes. NIWRC coordinates closely with other organizations to ensure adequate protections for survivors of domestic violence, sexual assault, and other crimes are included in federal legislation, particularly VAWA.

The **National Network to End Domestic Violence** ("NNEDV"), a social change organization, is dedicated to creating a social, political and economic environment in which violence against women no longer exists. NNEDV is the leading voice for domestic violence victims and their advocates. As a membership and advocacy organization representing the 56 state and territorial domestic violence coalitions, allied organizations and

supportive individuals, NNEDV works closely with its members to understand the ongoing and emerging needs of domestic violence victims and advocacy programs. Then NNEDV makes sure those needs are heard and understood by policymakers at the national level.

The **National Organization for Women Foundation** (a 501 (c) (3) organization) is the education and litigation arm of the National Organization for Women ("NOW"), the largest feminist grassroots organization in the United States, with hundreds of chapters in every state and the District of Columbia. The Foundation's mission is to advocate for the equal rights and well-being of women, addressing a range of issues including violence against women, equal educational opportunity, reproductive rights and women's health, constitutional equality, LGBTQIA rights, combating racism, and especially focusing on the intersectionality of race- and sex-discrimination that harms women of color, including many immigrant women. With NOW and other organizational partners NOW Foundation co-founded the National Coalition for Immigrant Women's Rights ("NCIWR") to advocate for comprehensive immigration reform and effective policy and legislative solutions to problems confronting immigrant women and their families, especially concerning immigrant women who have experienced domestic violence or sexual assault and are at risk for continuing violence from their abuser.

Since 1993, the **National Resource Center on Domestic Violence** ("NRCDV") has provided comprehensive and individualized technical

assistance, training, and resource development related to domestic violence intervention and prevention, community education and organizing, and public policy and systems advocacy. The NRCDV strives to be a trusted national leader and sustainable organization, renowned for innovation, multi-disciplinary approaches, and a commitment to ensuring that policy, practice and research is grounded in and guided by the voices and experiences of domestic violence survivors and advocates.